UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,854	01/16/2004	Sreenivas Addagatla	042933/271712	6954

826 7590 08/02/2010

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER	
WHIPPLE, BRIAN P	

ART UNIT	PAPER NUMBER
2452	

MAIL DATE	DELIVERY MODE
08/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/758,854	ADDAGATLA ET AL.	
	Examiner	Art Unit	
	BRIAN P. WHIPPLE	2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 July 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-7,12,16-22,26 and 27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-7,12,16-22,26 and 27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/24/10*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 4-7, 12, 16-22, and 26-27 are pending in this application and presented for examination.

Response to Arguments

2. Applicant's arguments filed 7/2/10 have been fully considered, but they are not persuasive.

3. As to claims 1, 4, 16, 19, 22, and 26, the applicant argues Gutman fails to consider the data transfer rate of the network between the first and second device. The examiner respectfully disagrees.

Gutman discloses auto-negotiation of data transfer rates between a first and second device, but a scenario is disclosed in which a network of various other devices is situated between the first and second device (Gutman: Col. 1, ln. 64 – Col. 2, ln. 6). If two devices in an Ethernet network auto-negotiate to communicate at a particular common speed, it is inherent that the devices between the two devices also support the common speed, as auto-negotiation is known to configure the communications for the links between each intermediate device. Additionally, Gutman expressly indicates that the two devices, which may be separated by a network of devices as mentioned previously, actively communicate at

the slowest common link speed (Col. 5, ln 6-7) and therefore the intermediate devices must be considered for this slowest common link speed in order to enable the active communication.

4. As to claims 5-7, 12, 17-18, 20-21, and 27, the claims are argued to be allowable due to their dependency on the independent claims, but the examiner has refuted the allowability of these claims above.

5. As to the use of Official Notice, the applicant's challenge is inadequate, because MPEP 2144.03, (C), does not state that an applicant merely need to challenge the use of Official Notice, but that such a challenge must "adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." In this case, the applicant has provided no reasoning as to why "the noticed fact is not considered to be common knowledge."

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international

application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 4, 16, 19, 22, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Gutman et al. (Gutman), U.S. Patent No. 7,366,930 B2.

7. As to claim 1, Gutman discloses a system (Col. 1, ln. 48-55) comprising:

a first host configured to provide for transmission of multiplexed data a first data transfer rate (Col. 4, ln. 64-65);

a second host configured to receive multiplexed data a second data transfer rate (Col. 4, ln. 66-67);

a network through which data is transferred from the first host to the second host having a third data transfer rate (Col. 1, ln. 64 – Col. 2, ln. 6);

a data throttle, wherein the data throttle is configured to limit the first data transfer rate to a throttle value that is less than or equal to the least one of the first data transfer rate, the second data transfer rate, and the third data transfer rate, and wherein the second and third data transfer rates are obtained during a communication start-up process from signaling, and wherein at least two of the first, second, and third data transfer rates are different from one another (Col. 3, ln. 46-52; Col. 5, ln. 1-7).

8. As to claims 4, 16, 19, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman as applied to claim 1 above, in view of Official Notice (See MPEP 2144.03).

11. As to claim 12, Gutman discloses the invention substantially as in parent claim 1, but does not explicitly disclose SIP.

Official Notice is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman by using SIP as was well known in the art at

the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

12. Claims 5-7, 17-18, 20-21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman as applied to claims 1, 16, 19, and 26 above, in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

13. As to claim 5, Gutman discloses the invention substantially as in parent claim 1 above, but is silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

14. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.

15. As to claim 7, Gutman and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).

16. As to claims 17, 20, and 27, the claims are rejected for similar reasons to claim 6 above.

17. As to claims 18 and 21, the claims are rejected for similar reasons to claim 7 above.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571-272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
/B. P. W./
Examiner, Art Unit 2452
7/28/10

/THU NGUYEN/
Supervisory Patent Examiner, Art Unit 2452